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Attorneys for Plaintiffs, TOMAS BARRERA, SR., individually and as a Personal Representative of THE ESTATE OF TOMAS BARRERA, JR.

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MARIA LAZOS, et al,

Plaintiff,

vs.

CITY OF OXNARD, et al,

Defendants.

TOMAS BARRERA, SR.

Plaintiff,

vs.

CITY OF OXNARD, et al,

Defendants.

Case No. CV 08-02987 RGK (SHx)

PLAINTIFFS' MOTION IN LIMINE  
NO. 2 TO EXCLUDE ANY MENTION  
OF DECEDENT'S USE OF DRUGS OR  
ALCOHOL OF

Date: August 11, 2009  
Time: 9:00 a.m.  
Courtroom: 850

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

Plaintiffs, MARIA LAZOS and TOMAS BARRERA, SR., individually and as representatives of the ESTATE OF TOMAS BARRERA, hereby move this Court for an order excluding any and all evidence, testimony, references to testimony/evidence or argument, relating to decedent's drug/alcohol use.

This motion is made under Fed. R. Ev. 401, 402 and 403, and is based upon the ground that the evidence is irrelevant and that its probative value is substantially

1 outweighed by the danger of undue prejudice to Plaintiff.

2 This motion is further based on the attached Memorandum of Points and  
3 Authorities, the pleadings and papers on file in this action and upon such of argument  
4 and evidence as may be presented prior to or at the hearing of this motion.

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6 Dated: June 23, 2009

LAW OFFICES OF GREGORY A. YATES, P.C.

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GREGORY A. YATES  
Co-Counsel for Plaintiffs,  
TOMAS BARRERA, SR., individually and as a  
Personal Representative of THE ESTATE OF  
TOMAS BARRERA, JR.

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11 Dated: June 26, 2009

LAW OFFICES OF KIM SCOVIS

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JENNY SCOVIS  
Counsel for Plaintiff,  
MARIA LAZOS, individually and as a Personal  
Representative of THE ESTATE OF TOMAS  
BARRERA, JR.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**EVIDENCE OF PLAINTIFF'S PRIOR DRUG/ALCOHOL USE AND/OR ADDICTION SHOULD BE EXCLUDED AS BEING NOT RELEVANT AND HIGHLY PREJUDICIAL**

Evidence of drinking or drug habits is generally inadmissible, absent a showing that the witness had been drinking prior or contemporaneous to the event in question. United States v. Robinson, 956 F.2d 1388, 1397-98 (7<sup>th</sup> Cir. 1992); Black v. N&W Gear Co., 269 F.3d 1220, 1233-26 (10<sup>th</sup> Cir. 2001). In this case, there is no evidence to suggest that the decedent was under the influence prior to being shot. More importantly, there is no evidence that drug/alcohol use was a factor in the decision to shoot decedent. There is absolutely no evidence that decedent consumed any alcohol or used drugs prior to the incident, and certainly his past conduct has no bearing on the issue in this action.

Admitting evidence of decedent's drug and/or alcohol use would not prove or disprove any fact necessary to this action and will add absolutely nothing significant or valuable to the evidence. F.R.E. 401 and 402.

While admitting such evidence has no probative value, it would be highly prejudicial, as it would depict decedent as a drug user and/or alcoholic and will arouse the jury's prejudice, hostility and antipathy. *See* United States v. Blackstone, 56 F.3d 1143, 1145-46 (9<sup>th</sup> Cir. 1995) (trial court abused its discretion by admitting evidence of narcotics recipes that were found in the defendant's vehicle and expert testimony regarding drug-trafficking, because, to the extent that the evidence was relevant, it was unfairly prejudicial and highly inflammatory); Lucero v. Donovan, 354 F.2d 16, 22 (9<sup>th</sup> Cir. 1965 (trial court erred by admitting expert testimony that plaintiff was a narcotics user based upon a scar on her arm, because the evidence was not proper for impeachment and was irrelevant and prejudicial); Rovegno v. Geppert

1 Bros., Inc. (1982 CA3 Pa) 671 F.2d 327 (in wrongful death action, judge did not  
2 abuse his discretion by excluding as unfairly prejudicial evidence of truck driver's  
3 elevated blood alcohol level at time of accident where there was no evidence that  
4 there was anything unusual about driver's operation of his vehicle before accident.)

5 Allowing the evidence will prolong this trial and waste the valuable time and  
6 resources of the Court and all other participants, while adding absolutely nothing  
7 significant or valuable to the evidence.


8 **II.**

9 **CONCLUSION**

10 Based on the above, it is respectfully requested that the Court exclude any and  
11 all evidence, testimony, references to testimony/evidence or argument, relating to  
12 decedent's drug/alcohol use.


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14 Dated: June 23, 2009

LAW OFFICES OF GREGORY A. YATES, P.C.

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17 GREGORY A. YATES  
18 Co-Counsel for Plaintiffs,  
TOMAS BARRERA, SR., individually and as a  
Personal Representative of THE ESTATE OF  
TOMAS BARRERA, JR.

19 Dated: June 26, 2009

LAW OFFICES OF KIM SCOVIS

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22 JENNY SCOVIS  
23 Counsel for Plaintiff,  
24 MARIA LAZOS, individually and as a Personal  
25 Representative of THE ESTATE OF TOMAS  
26 BARRERA, JR.